

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

NOV - 9 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Access Charge Reform)	CC Docket No. 96-262 ✓
)	
Price Cap Performance Review)	CC Docket No. 94-1
for Local Exchange Carriers)	
)	RM-9210

REPLY COMMENTS OF CTSI, INC.

CTSI, Inc., formerly known as Commonwealth Telecom Services, Inc. ("CTSI"), by its undersigned counsel, hereby submits its reply comments in the above-referenced proceeding. The Commission requested parties to update and refresh the record in its Public Notice dated October 5, 1998.¹ Because the ILEC comments provide no further support for pricing flexibility, the Commission should decline to implement pricing flexibility at this time. Moreover, the ILECs failed to provide any support for the Commission to adopt the Bell Atlantic, Ameritech or the USTA proposal. All three proposals permit pricing flexibility to begin without any evidence of actual competition.

I. The Comment Record Confirms that Genuine Competition in the Local Exchange Does Not Yet Exist

In its initial comments, CTSI argued that implementing pricing flexibility at this time would be premature.² CTSI explained that pricing flexibility would not be appropriate until there

¹ Commission Asks Parties to Update and Refresh Record For Access Charge Reform and Seeks Comment on Proposals For Access Charge Reform Pricing Flexibility, Public Notice, FCC 98-256, released October 5, 1998.

² CTSI Comments, at 2.

No. of Copies rec'd CH 8
List A B C D E

were actual signs of genuine competition. Because such a time has not yet arrived, it would be premature to consider adopting pricing flexibility.

The evidence submitted by the commenters as a whole support CTSI's claim. As Sprint pointed out, the most recent data shows that ILECs received 97.5% of total local service providers' revenues in 1997.³ AT&T argues that even in the most competitive metropolitan area (New York City) the ILEC has lost only 6% of its market to competitors.⁴ Indeed, not only carriers attempting to compete in the local exchange recognize that ILECs control the local market, but commenters from other industry groups expressed their outrage at the continued monopoly level of ILEC control. For example, the General Services Administration ("GSA") noted that not only do ILECs earn more than 97 percent of local service revenue, the ILECs exert control over the broadband networks for providing information services to the public, and control advanced telecommunications services by ownership of the last mile voice transmission facilities.⁵ Similarly, the Competition Policy Institute ("CPI") concluded that by year-end 1998, competitors will serve only about 1.4 million of the nation's estimated 177 million access lines through UNE-based entry.⁶

In contrast, although the ILECs profess vibrant competition, they provide no evidence showing actual competition in the local exchange. For example, Bell Atlantic claims that there has

³ Sprint Comments, at 10.

⁴ AT&T Comments, at 5 (citing *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, Memorandum Opinion and Order, at ¶ 169 (rel. September 14, 1998)).

⁵ GSA Comments, at 9.

⁶ CPI Comments, at 8.

been a dramatic increase in competitive entry, but the numbers it cites indicates that CLECs have barely made a dent in the market. Bell Atlantic's claim that it now has 800,000 competitive lines in its service areas illustrates that CLECs only have (at most) approximately 2% of the market in Bell Atlantic's territory.⁷ Similarly, Ameritech states that total competitive lines in its regions increased from 557,810 to 1,026,202 in the first eight months of this year.⁸ These statistics, however, also help confirm that CLECs provide service to only a very small percentage of the market. CTSI submits that the evidence in the record plainly reflects that the state of competition is currently too premature to consider implementing pricing flexibility. Instead, to promote further competition, the Commission should focus on more vigorously enforcing the key market-opening provisions of the Telecommunications Act.

II. The Commission Should Reject the USTA Proposal As Well As the Bell Atlantic and Ameritech Proposals

In its initial comments, CTSI argued that the Commission should reject the Bell Atlantic and Ameritech pricing flexibility proposals.⁹ CTSI argued that the Bell Atlantic and Ameritech proposals were flawed in that they would establish pricing flexibility based only on potential competition, with little evidence of actual competition. Accordingly, CTSI argued that the Commission should reject those proposals because they would undermine competition.

⁷ See Second Common Carrier Bureau Survey on the State of Local Competition (June 1998) (showing a total of more than 40 million lines in Bell Atlantic's territory).

⁸ Ameritech Comments, at 6.

⁹ CTSI Comments, at 5-8.

USTA has made a proposal that many of the ILECs support, which is very similar to the Bell Atlantic and Ameritech proposals and, therefore, should also be rejected by the Commission. For example, like the Bell Atlantic and Ameritech proposals, USTA has proposed that Phase one of pricing flexibility should be implemented after the ILEC has achieved a state-approved interconnection agreement or statement of generally available terms.¹⁰ As stated in its initial comments, CTSI believes that negotiated interconnection agreements already exist in all 50 states.¹¹ Allowing pricing flexibility on such meager showings would effectively permit pricing flexibility everywhere without any showing of actual competition. As many commenters aptly noted, the fact that one interconnection agreement has been approved by a state does not mean that any true competition is occurring.¹² Because of the numerous obstacles to overcome, such as raising capital, and gaining authority to use rights-of-way, the CLEC may not be in a position to provide services to the public until long after it obtains an interconnection agreement. Thus, USTA's proposal, like the Bell Atlantic and Ameritech proposals, would permit pricing flexibility to proceed actual competition in the local exchange market.

In addition, CTSI objects to the scope of pricing flexibility in the USTA proposal, which would permit pricing flexibility throughout an MSA or LATA if its proposed preconditions are met anywhere in the MSA or LATA. This would undermine competition by permitting a wide range of pricing flexibility in a broad geographic area, even though there may only be competition in one

¹⁰ USTA Comments, at Appendix E.

¹¹ CTSI Comments, at 5.

¹² See Sprint Comments, at 12; ALTS Comments, at 9; CoreComm Comments, at 6; RCN Comments, at 6; KMC Comments, at 4-5.

small part of the region. More problematic, the proposed pricing flexibility to be permitted would be substantial, allowing nearly complete deregulation of new services, price deaveraging, volume and term pricing, contract pricing, and promotional pricing throughout a LATA or MSA.

Furthermore, the preconditions suggested by USTA should not be taken seriously by the Commission. The USTA proposal makes no reference to the key market opening provisions of the Telecommunications Act. Thus, to enable the ILEC to enjoy the benefits of pricing flexibility, the USTA proposal does not require that the ILECs demonstrate compliance with any critical market opening requirements of the Telecommunications Act. For the same reasons several commenters, including CTSI, argued that such aspects of the Bell Atlantic and Ameritech proposals were deficient, the USTA proposal is problematic as well.¹³

Accordingly, the Commission should reject the USTA proposal for the same reasons CTSI urged the Commission to reject the Bell Atlantic and Ameritech proposals.

III. The Commission Should Require Vigorous, Widespread, Actual Competition, Not Potential Competition, Prior to Implementing Pricing Flexibility

In the *Access Reform NPRM*,¹⁴ the Commission proposed that the initial stage of pricing flexibility would be premised on ILECs having complied with various proposed market-opening requirements that would permit the development of competition in the local exchange. CTSI opposes adopting any pricing flexibility on this basis. Pricing flexibility was based on the concept

¹³ See, e.g. CTSI Comments, at 6; CoreComm Comments, at 8; RCN Comments, at 5-6; KMC Comments, at 3-4.

¹⁴ *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges*, Notice of Proposed Rulemaking, CC Docket Nos 96-262, 94-1, 91-213, and 95-72, 11 FCC Rcd 21354, para. 161 (1996)(“*Access Reform NPRM*”).

that pricing regulation should only be removed where competition is available to discipline prices. However, until significant competition exists in the local exchange there will be insufficient marketplace forces to substitute for regulation in controlling ILEC prices. Moreover, the Commission originally proposed to establish initial pricing flexibility on the basis of potential competition because at that time, the Commission assumed that vibrant competition would soon occur. As demonstrated by numerous commenters, this goal has not achieved fruition.¹⁵ Accordingly, the Commission should abandon the proposal to establish pricing flexibility on the basis of potential competition.

Instead, the Commission should not permit, or further consider, implementing any pricing flexibility proposals until there is a substantial degree of competition in the local exchange market. Delaying pricing flexibility until a time of actual competition would be the most likely plan to assure that the competitive goals of the Telecommunications Act are achieved. CTSI urges the Commission, in grappling with the difficult competitive issues raised in this proceeding, to err on the side of caution and denial of pricing flexibility. Delaying further consideration of pricing flexibility until it is clear that local competition is flourishing will not harm ILECs. The very high rates of return that ILECs are earning under price cap regulation eliminates any need to rush to establish pricing flexibility both as a legal and policy matter.¹⁶


¹⁵ Sprint Comments, at 10; MCI WorldCom Comments, at 7; AT&T Comments, at 4-5; KMC Comments at 2; GSA Comments, at 9; CPI Comments, at 8.

¹⁶ The mean rate-of-return for price cap companies for interstate services was 15.64% in 1997. The highest rate-of-return was 48.86%. Interstate Rate of Return Summary Years 1991 through 1997, Industry Analysis Division, Common Carrier Bureau.

III. CONCLUSION

For the foregoing reasons, CTSI requests that the Commission refrain from adopting pricing flexibility at this time. CTSI urges the Commission to delay implementing any pricing flexibility proposal until actual competition exists in the local exchange market. Accordingly, at this time, the Commission should reject the Bell Atlantic, Ameritech, and the USTA pricing flexibility proposals.

Respectfully submitted,



Russell M. Blau
Pamela S. Arluk
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007
(202) 424-7500

Dated: November 9, 1998

Counsel for CTSI, Inc.

Certificate of Service

I, Martina L. Snoddy, certify that I have this 9th day of November, 1998, served copies of the Reply Comments of CTSI, Inc. via hand delivery(*), or First Class U.S. Mail, on the parties listed below.

Magalie Roman Salas (orig. + 8)*
Office of the Secretary
Federal Communications Commission
1919 M St. N.W., Room 222
Washington, D.C. 20554

International Transcription Service, Inc. (1)*
1231 20th Street, N.W.
Washington, D.C. 20037

Chief, Competitive Pricing Division (1)*
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Don Sussman
Alan Buzacott
Chris Frentrup
Henry G. Hultquist
Elizabeth A. Yockus
Richard S. Whitt
Mary L. Brown
MCI WorldCom, Inc.
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Andrew Regitsky
Regitsky & Associates
12013 Taliesin Place, Suite 32
Reston, VA 20190
Counsel for MCI

Lawrence E. Sarjeant
Linda L. Kent
Keith Townsend
John W. Hunter
USTA
1401 H Street. N.W., Suite 600
Washington, D.C. 20005

Leon M. Kestenbaum
Jay C. Keithley
H. Richard Juhnke
Sprint Corporation
1850 M Street, N.W., 11th Floor
Washington, D.C. 20036

Ronald J. Binz
Debra R. Berlyn
John Windhausen, Jr.
Competition Policy Institute
1156 15th Street, N.W., Suite 520
Washington, D.C. 20005

Emily M. Williams
Association for Local
Telecommunications Services
888 17th Street, N.W., Suite 900
Washington, D.C. 20036

Susan M. Eid
Tina S. Pyle
Margaret Sofio
MediaOne Group, Inc.
1919 Pennsylvania Ave., N.W., Suite 610
Washington, D.C. 20006

Jules M. Perlberg
Sidley & Austin
One First National Plaza
Chicago, IL 60603

Mark C. Rosenblum
Peter H. Jacoby
Judy Sello
AT&T Corp., Room 3245I1
295 North Maple Avenue
Basking Ridge, NJ 07920

Gene C. Schaerr
James P. Young
Sidley & Austin
1722 Eye Street, N.W.
Washington, D.C. 20006

Robert M. Lynch
Durward D. Dupre
Michael J. Zpevak
Thomas A. Pajda
Southwestern Bell Tel. Co., Nevada Bell,
Pacific Bell
One Bell Plaza, Room 2403
Dallas, TX 75202

Robert B. McKenna
Jeffrey A. Brueggeman
US West, Inc., Suite 700
1020 19th Street, N.W.
Washington, D.C. 20036

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, N.W., Suite 701
Washington, D.C. 20006

Anne Levinson
Richard Hemstad
William R. Gillis
Washington Utilities and
Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

Christopher J. Wilson
Frost & Jacobs LLP
2500 PNC Center
201 East Fifth Street
Cincinnati, Ohio 45202

Thomas E. Taylor
Cincinnati Bell Telephone Company
201 East Fourth Street
Cincinnati, Ohio 45201

Gene Kimmelman
Consumers Union
1666 Connecticut Avenue, N.W., Suite 310
Washington, D.C. 20009

Russell M. Blau*
Eric J. Branfman
Patrick J. Donovan
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007

Mitchell F. Brecher
Fleischman and Walsh, LLP
1400 Sixteenth Street, NW
Washington, D.C. 20036

R. Michael Senkowski
Gregory J. Vogt
Kenneth J. Krisko
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

M. Robert Sutherland
Richard M. Sbaratta
BellSouth Corporation, Suite 1700
1155 Peachtree Street, N.E.
Atlanta, GA 30309-3610

Wayne V. Black
C. Douglas Jarrett
Sana D. Coleman
Keller and Heckman LLP
1001 G Street, N.W., Suite 500 West
Washington, D.C. 20001

J.M. Lewis
Enterprise Networking Technologies
Users Association
Department J
P.O. Box 4755
Carol Stream, IL 60197-4755

Emily C. Hewitt
George N. Barclay
Michael J. Ettner
General Services Administration
1800 F Street, N.W., Room 4002
Washington, D.C. 20405

Danny E. Adams
Steven A. Augustino
Melissa M. Smith
Kelley Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036

James E. Smith
Excel Telecommunications, Inc.
1133 Connecticut Avenue, N.W., Suite 750
Washington, D.C. 20036

Jere W. Glover
S. Jenell Trigg
Eric E. Menge
Office of Advocacy
U.S. Small Business Administration
409 Third Street, SW, Suite 7800
Washington, D.C. 20416

Mark Cooper
Consumer Federation of America
1424 16th Street, N.W., Suite 604
Washington, DC 20036

Brian R. Moir
Moir & Hardman
2000 L Street, N.W., Suite 512
Washington, D.C. 20036-4907

Cathy Hotka
National Retail Federation
325 7th Street, N.W.
Washington, D.C. 20004

Rachel J. Rothstein
Cable & Wireless USA, Inc.
8219 Leesburg Pike
Vienna, VA 22182

Robert M. McDowell
America's Carriers Telecommunication
Association
8180 Greensboro Drive, Suite 700
McLean, VA 22102

Debbie Goldman
George Kohl
501 Third St. N.W.
Washington, D.C. 20001

Brian Conboy
Michael Jones
Gunnar Halley
Wilkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20036

Michele C. Farquhar
David L. Sieradzki
Ronnie London
Hogan & Hartson, LLP
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109

Susan M. Gately
Patricia M. Kravtin
Scott C. Lundquist
Helen E. Golding
Economics and Technology, Inc.
Boston, MA 02108-2617

Michael S. Pabian
Ameritech
2000 West Ameritech Center Drive
Suite 4H82
Hoffman Estates, IL 60196-1025

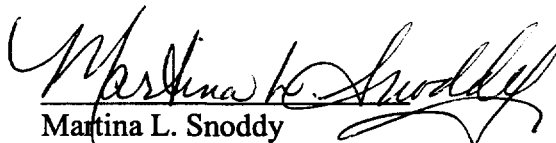
Edward Shakin
Bell Atlantic Telephone Company
1320 North Court House Road
8th Floor
Arlington, VA 22201

Genevieve Morelli
Executive Vice President
and General Counsel
The Competitive Telecommunications
Association
1900 M Street, N.W., Suite 800
Washington, D.C. 20036

James S. Blaszak
Valeria Yates
Levine, Blaszak, Block & Boothby, LLP
2001 L Street, N.W.
Washington, D.C. 20036

Gail L. Polivy
GTE Service Corporation
1850 M Street, N.W., Suite 1200
Washington, D.C. 20036

John F. Raposa
GTE Service Corporation
600 Hidden Ridge, HQE03J27
Irving, TX 75038


Martina L. Snoddy